

DEC 28 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICTOR HUGO BALLESTEROS
MARTINEZ,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-75790

Agency No. A97-354-921

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 3, 2007 **

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Victor Hugo Ballesteros Martinez, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' denial, as untimely and

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

without merit, of his motion to reopen proceedings in order to apply for protection under the Convention Against Torture ("CAT") following the denial of his application for cancellation of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We deny the petition for review.

Ballesteros Martinez contends that his motion to reopen was timely because there is no time limit for motions to reopen that seek relief under CAT and because he only recently became aware of “widespread torture” in Mexico. Ballesteros Martinez filed his motion to reopen outside the ninety-day time limit set forth in 8 C.F.R. § 1003.2(c)(2). In addition, he failed to present material evidence of changed country conditions that was not available and could not have been presented at the previous proceeding. *See* 8 C.F.R. § 1003.2(c)(3)(ii); *He v. Gonzales*, 501 F.3d 1128, 1131-32 (9th Cir. 2007).

Ballesteros Martinez also contends that the Board erred in concluding that he failed to establish a prima facie case of eligibility for relief under CAT. The generalized evidence attached to his motion did not meet this standard. *See Nuru v. Gonzales*, 404 F.3d 1207, 1216 (9th Cir. 2005) (holding that CAT applicant must establish that it is more likely than not that he would be tortured if removed to his native country); *Ordonez v. INS*, 345 F.3d 777, 785 (9th Cir. 2003) (holding that motion to reopen must establish prima facie case demonstrating reasonable

likelihood that requirements for relief have been satisfied).

PETITION FOR REVIEW DENIED.